

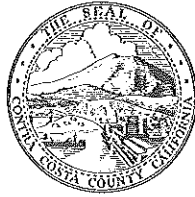
Department of Conservation & Development

Community Development Division

County Administration Building
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Martinez, CA 94553-1229

Phone: (925) 335-1240

Contra Costa County



Catherine O. Kutsuris
Director



August 2, 2010

Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

Re: Government and Implementation Workgroup

Dear Chairman Isenberg and Council Members:

Enclosed with this letter are responses from the Contra Costa County Conservation and Development Department on the questions prepared for the workgroup meeting on the topic of Governance and Implementation in support of the development of the Interim Plan and Delta Plan. The responses are organized in the same order as the discussion questions in the August 3 meeting announcement. Please call me if you have any questions on this material.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Goetz".

Steven L. Goetz, Deputy Director
Conservation and Transportation Planning Programs

enclosure

cc: Contra Costa County Legislative Delegation
Contra Costa County Board of Supervisors
Delta Counties Coalition
Contra Costa Council

Governance and Implementation Work Group

The DSC questions posed to this work group are numbered/lettered and in italic type font. Contra Costa County's responses follow each question.

1. What can the Council do to assist other agencies – state, local and federal — to implement SBX 7 1? Are there early actions the Council should consider to promote implementation?

Early actions for the Delta Stewardship Council (DSC) to include in the Interim Delta Plan that will assist other agencies to implement SBX7-1 are as follows:

- **Notify all public agencies that may have potential covered actions.** Notification should go to all public agencies with jurisdiction or activities in the DSC's planning area. The notice should describe their statutory responsibility pursuant to Water Code § 85225 and the schedule for completing the Delta Plan. The DSC should advise the agencies that they should monitor development of the Delta Plan so if an agency approves a covered action after the Delta Plan is adopted, a certification of consistency can be anticipated.
- **Hold workshops for any proposed regulation or procedure.** Workshops should be considered if the proposed rule or regulation affects a significant number of entities, such as procedures for potential covered actions. At the time such procedures are prepared, the DSC should undertake direct outreach to affected entities to obtain comments on these procedures. Direct outreach in the form of workshops will help affected entities understand how the procedures would work and will allow affected entities to provide more constructive comments to the DSC.
- **Monitor preparation of the State Department of Parks proposal to the DPC.** Request the Department of Parks to report on its progress on preparing a proposal, for submission to the Delta Protection Commission (DPC), to expand within the Delta the network of state recreation areas pursuant to Water Code § 85301c1. This report will be used by the DPC in its recommendations to the DSC on the Delta Plan.
- **Monitor preparation of the Food and Agriculture proposal to the DPC.** Request the Department of Food and Agriculture to report on progress made on its proposal to the DPC to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture as required by Water Code § 85301c2. This report will be used by the DPC in its recommendations to the DSC on the Delta Plan.
- **Advise the DPC that the Delta Value Proposal (Water Code § 85301c) and the Economic Sustainability Plan (Water Code § 29759) should be consistent with the eight policy objectives for the Delta (Water Code § 85020).**
- **The Delta Plan should incorporate the recommendations of the DPC Resource Management Plan, the Economic Sustainability Plan and the Primary Management Zone Study**

- **Direct the Independent Science Board (ISB) to review the Two Gates Demonstration Project.** This review should include consultation with the Bureau of Reclamation on the viability of the Demonstration Project as an early action. The Bureau of Reclamation has fundamental questions about whether the scientific assumptions that underlie the project are sound and, as a result, whether the project will serve its intended purpose (see attached letter). The Bureau also noted that the cost of the Demonstration Project has escalated from an early estimate of \$29 million to current estimates of between \$60 and \$80 million. The ISB should report to the DSC on whether the scientific, navigation, and economic issues associated with the Demonstration Project are likely to be resolved in the near term.
- **Request the Department of Water Resources (DWR) to identify near-term levee improvements essential to the operation of the State Water Project and Central Valley Project and that can be funded by Proposition 1E revenue.** Specific tasks for accomplishing near term levee improvements have been described in the comments of the *Natural Resource Defense Council* (May 12, 2010 correspondence) and the *Contra Costa Water District* (May 12, 2010 correspondence). These early actions were: 1) preparation of a management plan for Sherman Island, and 2) identification of levees essential to the operation of the State Water Project and Central Valley Project. The implementation issue here is that agencies with the capability and authority to undertake these early actions have not done so. One of the primary reasons for creation of the DSC was to fill voids in leadership on actions that are essential to meeting the co-equal goals in SBX7-1. The DSC must provide leadership to further these two early actions. Since these comments on early actions for levee improvements have been made to the DSC two draft of the Interims Plan have been issued. No early actions on levee improvements, let alone these two specific actions, were included in these Interim Plan drafts.
- **Investigate and provide recommendations for improved enforcement of existing laws that protect the Delta ecosystem.** Comments have been submitted by the *Coalition for a Sustainable Delta* and others suggesting that regulatory authorities have allowed a wide array of actors to violate environmental laws affecting the Delta ecosystem, including state laws respecting:
 - Candidate, threatened, and endangered species,
 - Fully protected species,
 - Lake and streambed alteration,
 - Water quality, and
 - Water rights.

The DSC should request state agencies with activities in the Delta to report to the DSC regarding their enforcement obligations and activities. The agency reports should include enforcement obligations, ongoing enforcement actions, existing enforcement resources, and prioritized lists of both ongoing and desired enforcement activities. With this list, the Council can identify enforcement shortcomings, identify enforcement resources needed by the agencies, and identify the actions the DSC and others can take to ensure adequate enforcement activities. The DSC may also wish to review state

budget proposals for these agencies with enforcement responsibilities. These activities should be part of the Interim Delta Plan and inform the enforcement policies and actions of the final Delta Plan.

- **Initiate discussions with the Federal Bay-Delta Leadership Committee on the status of the Interim Federal Action Plan for the Bay Delta.** This Action Plan contains a variety of Federal actions and investments that the Administration is undertaking in a coordinated fashion to help address the Delta Plan's co-equal goals. It focuses primarily on a set of immediate and near-term actions that complement the longer term planning processes underway in California. The Action Plan proposes to identify joint priorities and opportunities for more robust collaboration that will be embodied in a *Coordinated Federal-State Work Plan* on California water issues to be developed by February 2010. The *Coordinated Federal-State Work Plan* addresses Federal involvement in aspects of the recently enacted California water legislation, including the DSC, the to-be-developed Delta Plan and its Bay Delta Conservation Plan (BDCP) foundation, and the habitat restoration provisions of the Delta Conservancy's Strategic Plan. The DSC can use the consultation with Federal agencies as an opportunity to review and update the Action Plan (and the related *Coordinated Federal-State Work Plan*) to incorporate federal support for early actions and federal support for completion of an effective Delta Plan.

2. *What implementation issues are likely to arise, and how can these be addressed as agencies respond to SBX 7 1 and the Council undertakes its responsibilities? Examples of implementation issues already raised include, but are not limited to, the following:*

- a. *Suisun Marsh where there is a geographic overlap with BCDC*
- b. *County land use plans*

Reviewing consistency of local land use decisions with the Delta Plan should rely on the DPC's Resource Management Plan process. The DPC is authorized to coordinate land use policies in the Primary Zone through adoption of the Resource Management Plan (RMP) and administration of an appeal process for actions by cities and counties within the Primary Zone. SBX7-1 requires the DPC to submit an annual report to the Legislature describing progress that has been made on DPC mandates, including *determining the consistency of local general plans with the Delta Plan* (Public Resource Code § 29780a1). The DSC should integrate the land use policies of the Delta Plan with DPC procedures by 1) including the land use policies of the RMP into the Delta Plan, and 2) request the DPC to provide recommendations for Delta Plan land use policies in the Secondary Zone. Such cooperative efforts between the DPC and the DSC can be facilitated though the committee of agencies responsible for implementing the Delta Plan, which the DSC is to establish pursuant to Water Code § 85204.

c. Habitat Conservation Plans

Include the conservation strategies of all adopted Habitat Conservation Plans (HCPs) in the Delta Plan and support coordinated implementation. The DSC should assume that an adopted HCP is adequate for covered species. Furthermore, in order to ensure that land acquisition programs are coordinated and not competitive, the DSC should consult with local agencies administering HCPs in the Delta on the goals, geographic targets, public presentation and implementation of any land acquisition program administered or overseen by the DSC. The DSC should consider partnering with such local agencies to implement land acquisition programs to ensure coordination and take advantage of the local agencies' experience and expertise.

d. Levees, in light of the Delta Levees Subvention and Special Projects program administered by DWR

Develop recommendations to improve the process by which DWR administers the Delta Levees Subventions and Special Projects Programs. There are voter-approved bond funds available for levee rehabilitation activities that are not being utilized – especially where great needs exist. Contra Costa County understands from our reclamation districts that problems with reimbursements for state-cost share of levee work significantly reduce the utility of these programs for non-project levees. The state budget appropriations in not maintained at consistently high levels with a multi-year budget to enable loans for the local cost-share to be granted for longer-term (multi-year) projects. In addition, the construction season and the budget process are concurrent, causing Delta-wide delay to levee repair when the state budget is not approved during the regular legislative session. Payments to reimburse local reclamation districts for the state-cost share for work performed should take place the same calendar year. The established process for advance payment of the state-cost share should be streamlined considerably to enable the process to work efficiently. An early action of the DSC is to investigate these programs and work with DWR and the Legislature on streamlining them.

e. As a responsible agency for the BDCP EIR. One possible implementation issue may be the future availability of lands for mitigation in the Delta?

Implementation issues likely to arise with the BDCP and how they can be addressed through early actions in the Interim Plan are as follows:

- **Collaborate with the cities and counties in the Delta regarding land for mitigation in the Delta.** Any quotas for land for mitigation in the Delta must be supported by quantified objectives for recovered fish population in the Delta and be consistent with other measures directed at achieving the recovered fish populations. With this assumption, the cities and counties within the Delta should be directly involved in determining the amount and location of the acreage proposed. The acreage goals for mitigation in the Delta are unlikely to be achieved without such collaboration.
- **DSC should ensure that the BDCP adequately addresses future availability of water flows for mitigation in the Delta.** An objective of the BDCP is to “restore and

protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirement of state and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements". This BDCP objective conflicts with the following facts:

- o The Delta Vision Strategic Plan indicates that the Delta water supply is significantly over subscribed. SBX7-1 included a new state policy to "reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies."
- o Recently, the State Water Resources Control Board released recommendations for water flows necessary to protect public trust values in the Delta. The report recommends substantially increasing flows into and out of the Delta, particularly in the winter and spring months, and limiting the reverse flows in the Delta that result from pumping by the state and federal export pumps. The report also recommends complementing these increased flows by cleaning up water quality and restoring natural habitats.

The point to be made is that the objective of the BDCP is on a collision course with reality, especially if its major focus is on increasing acreage for habitat. DWR is required to consult with the DSC and the ISB on development of the BDCP. Consequently, the DSC should undertake conclusive early actions to ensure that all feasible and effective strategies for improving the Delta ecosystem are fully considered by the BDCP.

- **Formalize cooperation between the DSC and the Departments of Water Resources and Fish & Game on the BDCP.** The importance of the DSC responsibilities regarding the BDCP call for development of an agreement with DWR and Fish & Game to formalize a commitment among the parties to work collaboratively in preparation of the BDCP and related environmental documents. This agreement should clarify and define the roles and responsibilities of the DSC and the departments. Responsibilities include coordination with the lead agencies on meeting the requirements of Water Code § 85320, providing preliminary deliverables and technical analyses for review and comment by the Independent Science Board and the DSC consultants. Since the public benefits of the BDCP have not been demonstrated, the agreement should include funding of DSC responsibilities under Water Code § 85320. Additional implementation issues regarding the DSC's responsibilities for the BDCP are described in the County's comments on administrative procedures for appeals which were submitted to the DSC on July 30, 2010.

3. What steps should the Council take to best identify relevant plans and to address their relationship(s) to the responsibilities of the Council?

Seek assistance from state agencies on identifying the relevant plans to that will show progress on reducing reliance on the Delta for California's water supply. SBX7-1 authorizes the DSC to establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the

Delta Plan with the DSC and other relevant agencies. An early action should be to obtain relevant plans from water agencies reliant on exports from the Delta watershed. Relevant plans would include drought contingency plans, Urban Water Management Plans, Agricultural Water Management Plans, and Integrated Regional Water Management Plans. The Committee should develop recommendation on addressing any significant gaps in information on plans and data for reducing reliant on the Delta for California's water supply.

Attachment



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-730
PRJ-2.00

DEC 22 2009

Mr. Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635

Subject: 2-Gates Fish Protection Demonstration Project (Demonstration Project)

Dear Mr. Nelson:

I am writing to advise you of the current status of the Demonstration Project.

Reclamation appreciates the efforts of the San Luis & Delta-Mendota Water Authority (SLDMWA) and Metropolitan Water District of Southern California (MWD), as the Demonstration Project proponents, to develop the design and prepare the environmental compliance documents for the project. The project is based on the proposition that turbidity management can be used to provide additional entrainment protection for the delta smelt at the federal and state pumps. The hope is that entrainment of delta smelt at the pumps could be reduced by separating turbid waters from the pumps through the use of operable gates.

As you know, in July 2009, Reclamation assumed the role of lead agency from the California Department of Water Resources to complete the permitting process for the Demonstration Project. We and our federal agency partners have devoted considerable staff resources and have worked closely with you to expedite the review and permitting process for the project in the hope that it could be permitted, constructed and operational in calendar year 2010. Most recently, Reclamation, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service have reviewed the latest draft Biological Assessment completed and submitted by MWD on November 17, 2009, and we are providing technical comments prepared by the staffs of the three federal agencies under separate cover.

We have conducted a thorough review of all aspects of the Demonstration Project and of the documentation that has been provided. Based on our review, and in consideration of several factors, we have concluded that the underlying scientific premise of the project needs to be established before the project can go forward, including the installation of the proposed gates. In connection with our intensive processing and permitting activities over the past several months, formal and informal scientific reviews of the proposal have identified major questions regarding the scientific assumptions that underpin the project and, as a result,

whether the project is likely to produce the desired result and whether it would be cost-effective. Review by the federal agencies and independent scientific bodies, including the CALFED Science Panel, indicates that critical aspects of the science and monitoring program approach as well as project impacts remain unresolved. Since many of these questions have been raised repeatedly over the past six months, they may not be answerable without first obtaining more information that will help answer fundamental questions about the premise of the proposed experiment. We note that scientific work currently under way by the U.S. Geological Survey (USGS) and others will provide valuable data to inform future steps with regard to the Demonstration Project.

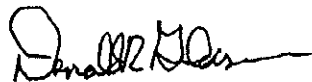
We also note that the cost of the Demonstration Project has escalated from an early estimate of \$29 million to current estimates of between \$60 and \$80 million. A decision to expend public funds of this magnitude cannot prudently be made in light of the fundamental questions that have been raised regarding whether the scientific assumptions that underlie the project are sound and, as a result, whether the project will serve its intended purpose. That is why we have moved quickly to work with the USGS to obtain needed data to evaluate interactions between delta smelt and turbid waters. Reclamation has redirected funds on an emergency basis, thereby enabling this data-gathering work to begin this fall.

Finally, while we recognize that expediting the permitting process for the Demonstration Project has garnered strong local, state, and Federal support, we have received over 1400 comment letters on the draft Environmental Assessment for the project from concerned citizens and organizations questioning the scientific basis, the benefits, and the potential impacts of the proposed action. In addition, the November 2009 Design, Estimating, and Construction Review noted nine findings and recommendations that need to be addressed to ensure the technical soundness of the Demonstration Project, and to provide a credible basis for decision-making.

We are committed to working with the SLDMWA, MWD, and the scientific community to resolve the scientific, navigation, and economic issues associated with the Demonstration Project.

We look forward to meeting with you to discuss the future of the proposal after the New Year. If you have any questions, please contact Michelle Denning, Regional Planning Officer, at (916) 978-5060.

Sincerely,



Donald R. Glaser
Regional Director

Continued on next page

Subject: 2-Gates Fish Protection Demonstration Project

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Identical Letter

Mr. Jeffrey Kightlinger
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cc: Mr. Ren Lohofener
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